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Report of the Special Rapporteur in the field of cultural rights on her mission to Cyprus: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur in the field of cultural rights, Karima Bennoune

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Report of the Special Rapporteur in the field of cultural rights on her mission to Cyprus: comments by the State*

1. The Government of the Republic of Cyprus expresses full support to Special Rapporteur in the field of cultural rights mandate as established by the Human Rights Council, in the context of which the Special Rapporteur held her mission to Cyprus from 24 May to 2 June 2016. After carefully studying the report which was prepared by the Special Rapporteur's office following her mission to Cyprus, the Government of the Republic of Cyprus would like to highlight the following:

Terminology used for the Republic of Cyprus and the areas under Turkish Military occupation

2. It should be reminded that the Republic of Cyprus is a member of the United Nations since 1960 and numerous other organizations, including the European Union since 2004. Turkey's military invasion in 1974 and the continuing military occupation of 36.2% of the territory of the Republic of Cyprus, has resulted in the violation of the human rights of thousands of people, both Greek and Turkish Cypriot. As a result of the continuing occupation, the Government is not in a position to apply and consequently ensure the implementation of human rights in the whole of its territory. It is well known that occupied territories are subject to specific rules of international law which are set out in the Hague Regulations and in the Geneva Conventions of 1949 as supplemented by the Additional Protocols 1 and 2 of 1977.

3. The draft report does not include any direct reference to the aforementioned fact, nor to the responsibilities of Turkey in the occupied areas of the Republic of Cyprus, in her capacity as the occupying power. The European Court of Human Rights (ECHR) in numerous decisions, including the Judgment on the 4th Interstate Application of Cyprus v. Turkey (May 10 2001), underlined that Turkey has "effective overall control over northern Cyprus". The Judgment also provided that violations of human rights by Turkey's soldiers, or officials, or by the subordinate local administration are imputable to Turkey. It should also be reminded that the unilateral declaration of the so-called "TRNC" in 1983, has been considered legally invalid, and null and void by the UN Security Council, through its resolutions 541(1983) and 550 (1984). Thus references/headings/subheadings throughout the draft report, such as "*Turkish Cypriot authorities*", "*Turkish Cypriot authorities dealing with...*", "*authorities in the north*", "*cultural authorities in the north*", "*Constitution currently in use in the north*" {such a reference in paragraph 9, is legally invalid – "trnc" is considered illegal, null and void by the UN Security Council and the international community}, "*officials on both sides*", "*local police*", "*publications of trnc" (paragraph 38 – first referen e of footnote 10, paragraph 49 – footnotes 14 &15), "in the north" etc,* and notably the *"recommendations to the Turkish Cypriot authorities*", should have been avoided, unless if they were specified as Turkey's subordinate local administration (for instance, page 2, paragraphs 3, 9, 19, 23, 38, 64, 69, 73, 76, 84, 85, 89, 90, 104, Section C, Section IV- A & C etc).

4. In the same context of corrections of terminology, it should be stressed that it is deplorable that the report contains the inappropriate references to the Authorities of the Republic of Cyprus, which is the contracting party to the legal instruments underlying the mandate of the Special Rapporteur.

* Reproduced as received.

5. In paragraph 12, the way the paragraph is written, represents an understatement of the dimension of the mass violations of human rights resulting from the Turkish military invasion in Cyprus in 1974.

6. In paragraph 75, more clarity should have been provided about the reasons that such "political, legal and logistical obstacles" occur. All these occur because of Turkey's military invasion in 1974 and the continuing military occupation of 36.2% of the territory of the Republic of Cyprus.

Settlers in the area of Cyprus under Turkish military occupation

7. It should be stressed that paragraph 81(as well as paragraphs 31 and 106) of the report misrepresents the issue of illegal settlers imported by Turkey in the occupied part of Cyprus. It is worth recalling that Article 49 (6) of the 4th Geneva Convention of 1949, a Convention which Turkey has signed and ratified, specifically stresses that "the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies". A similar provision is included in article 85 (4) (a) of the 1977 Protocol I, additional to the Geneva Conventions. Moreover, the Rome Statute of the International Criminal Court in article 8 (par. 2b-viii) prescribes "the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory" as a "war crime". In the case of the occupied areas of Cyprus, UN General Assembly Resolutions 33/15 (9 November 1978), 34/30 (20 November 1979) and 37/253 (13 May 1983) deplore "all unilateral actions that change the demographic structure of Cyprus".

8. Additionally, Resolution 4 (XXXII) of the UN Commission of Human Rights (27.2.76) urges all parties to refrain from unilateral actions in contravention of relevant United Nations Resolutions "including changes in the demographic structure of Cyprus" and Resolution 1987/50 (11.3.1987) of the same Commission expresses alarm "by the fact that changes in the demographic structure of Cyprus are continuing with the influx of great number of settlers". The fact that the occupied part of Cyprus has been subjected to systematic settlement from Turkey has been reported on twice by the Council of Europe's Committee on Migration, Refugees and Demography, in 1992 (Rapporteur: A. Cucó, Spain) and in 2003 (Rapporteur: J. Laakso, Finland).

9. It should be also noted that Regulation 866/2004 ("Green Line Regulation") of the European Union constitutes the legal framework for the crossing of individuals to and from the areas of the Republic of Cyprus under Turkish military occupation. The Regulation provides, inter alia, that: "Third-country nationals shall only be allowed to cross the line provided they: possess either a residence permit issued by the Republic of Cyprus or a valid travel document and, if required, a valid visa for the Republic of Cyprus". Turkish settlers do not meet this requirement and consequently cannot cross to the Government controlled areas.

10. In the case of settlers under consideration, their entry and settlement in Cyprus has taken place in a territory illegally occupied by a foreign state and was the result of an organized transfer of them by that state. Therefore, the entry and stay of the settlers in such territory is not only patently illegal, but also amounts to grave breach of the Geneva Conventions and constitutes a "war crime" the natural consequence of that being that it is not legally possible for the settlers in question to acquire as a result of such crime any legal rights. Such a right would have amounted to a permissible indirect violation of the relevant international rules.

Geographical Names/Toponyms

11. We express our disagreement with the argumentation presented in paragraphs 48, 105(d) and 106(e), regarding the legislation of the Republic of Cyprus on the issue. All actions that the Republic of Cyprus is undertaking on the said issue are based on the guidelines provided by the UN, and especially the United Nations Group of Experts on Geographical Names (UNGEGN), which is one of the seven standing expert bodies of ECOSOC. The Cyprus Permanent Committee for the Standardization of Geographical Names (C.P.C.S.G.N.) constitutes the only competent National Authority for the standardization of geographical names in Cyprus. The Republic of Cyprus, as an active member of UNGEGN, participating in every meeting/conference of UNGEGN since 1967, has deposited a complete list of the official names of toponyms/geographical names for Cyprus during the Fifth Conference of the United Nations for the Standardization of Geographical Names. The said list contains names of almost 70000 toponyms in Greek, Turkish and/or English (a document of 1669 pages). Thus, any changes in toponyms/geographical names that were changed without the permission of the C.P.C.S.G.N. (like the changes in toponyms/geographical names made by the occupied regime in the areas of Cyprus under Turkish military occupation) are considered illegal and not valid. In order to safeguard legality on the issue and acting in the context of the UNGEGN, a specific law was enacted, which by no means violates any human rights.

12. In this regard, we would like to stress that the report (for instance in paragraphs 2, 54, 55, 57, 64, 65, 85 etc) contains toponyms which are not in line with the UNGEGN lists.

13. Regarding paragraph 47, the reference that "most Greek Cypriots and many Turkish Cypriots alike reportedly reject the use of the new names in practice" is not factual, since almost all the Greek Cypriots (if not all) reject any changes in toponyms/geographical names made by the occupation regime in the areas of Cyprus under Turkish military occupation.

Destruction of cultural heritage in the occupied areas of Cyprus

14. In general, the report fails to accurately reflect the destruction, looting and desecration after 1974 of Greek, Roman, Catholic and Armenian religious and cultural sites. The monuments in the occupied part of Cyprus have been the target of an unprecedented and ongoing destruction and more than 60,000 cultural objects have been smuggled and illegally sold abroad. More than 550 churches and monasteries have been looted, destroyed or desecrated and more than 20,000 icons, sacred vessels, gospels and other objects have disappeared. Churches have been turned into mosques, museums, places of entertainment, hotels, army barracks, storages and even barns and their invaluable icons and frescoes removed and illegally sold abroad.

15. The aforementioned elements, which have already been provided to the Special Rapporteur during her mission in Cyprus, should have been stated more clearly and emphatically in the draft report, in order to have a factual reporting of those issues.

Religious Freedom – Religious services in the occupied areas of Cyprus.

16. We are disappointed that the report does not portray accurately the violations of the fundamental human right of religious freedom in the occupied areas of Cyprus, as reaffirmed by several respected bodies, including the European Court of Human Rights in the Fourth Interstate Application of Cyprus v. Turkey (May 10, 2001), the UN Special Rapporteur on the Freedom of Religion or Belief (A/HRC/22/51/Add.1, 24 December 2012), the European Parliament in its "Resolution on the situation of Christians in the context of freedom of religion" (January 20, 2011) and the U.S. Commission on International Religious Freedom (USCIRF). In fact, despite this factual evidence, the

occupation regime continues unabated to arbitrarily reject numerous requests submitted by displaced Greek Cypriots through UNFICYP, for the conduct of religious ceremonies in churches of their occupied villages and towns (for instance, for the year 2016, almost 60% of the religious service requests in occupied churches, were rejected). Instead of accurately reflecting those facts, the report regrettably contains a reference to allegations by the occupation regime that such requests are being made so as to promote a political agenda (paragraph 85).

17. In the same context, in paragraph 84, it is also alleged that the occupation regime "... pays particular attention to accounting for the icons to prevent false accusations of theft should an icon go missing...". It should be reminded that the organizers of religious services in churches of their occupied villages and towns are unable to take with them any of the original icons that were part of the said churches until 1974, since almost all of them have been looted after the Turkish military invasion in Cyprus in 1974. As a result of it, the organizers are usually using replicas and/or printouts of the original icons, in order to be able to contact, in a decent way, a religious service.

18. Furthermore, the last sentence of paragraph 85 ("... some Turkish Cypriots are reluctant to have Greek Cypriots organizing religious ceremonies in their villages) is not factual, since the Greek Cypriots are aiming to conduct religious ceremonies in churches of their occupied villages and towns, which are, since 1974, occupied by Turkey and are inhabited, since 1974, by not their lawful owners. Thus, the said reference should have been drafted in an accurate way.

Other comments on substance

Paragraph 3

19. The Special Rapporteur attended a meeting of the National Committee for the prevention of looting and illegal trafficking of cultural property during her visit in Cyprus and was informed of its responsibilities and its important role of keeping all the public authorities represented in this Committee informed of the latest measures taken relating to the protection of Cypriot cultural property. There should have been a reference to this meeting.

Paragraph 8

20. Apart from the provisions of the Constitution, the Republic of Cyprus has ratified the Convention for the Safeguarding of the Intangible Cultural Heritage (Law 50(III)/2005) that protects the practices, representations, expressions, knowledge, skills as well as instruments, objects, artifacts and cultural spaces associated therewith, that communities, groups and in some cases individuals recognize as part of their heritage. This fact should have been added in the report.

Paragraphs 17-18, 95d

21. The reference that the presence of two Departments within the Government of the Republic (i.e., Department of Antiquities and Cultural Services) "[...] *risks jeopardizing a cohesive cultural policy by separating cultural heritage and cultural life, and minimizing the human dimension of cultural heritage*" is not clearly or factually documented. The fact is that there is a clear division between the responsibilities of the two departments and there have never been any obstacles in the promotion and protection of cultural rights stemming from this division. Experts from both Cyprus and abroad have already been consulted on this matter. Even if there is a structural reorganisation in the future there are multiple reasons that argue against the unification of the two departments.

Paragraph 21

22. The appropriate reference to "crossing points" is "designated crossing points".

Paragraphs 23, 97

23. The report fails to mention that in the occupied part of Cyprus, illegal excavations are openly conducted, and that illicit trade in antiques and other treasures is being conducted.

24. With concern to paragraph 23 and paragraph 97, where suggestions are made towards the need for the establishment of structures, so as to tackle issues such as the conduct of archaeological excavations in the occupied areas, it should be emphasized that these are by law considered illegal excavations. Both under National Law, as well as international Conventions, these excavations are characterized as illegal. Specifically, according to the Antiquities Law of the Republic of Cyprus, the only authority that is legally able to conduct excavations or issue excavation licenses is the Department of Antiquities. Any other excavation activity therefore conducted by the illegal regime in the areas of the Republic occupied by Turkey is illegal. In addition, the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict clearly states that "any archaeological excavation of, alteration to, or change of use of, cultural property in occupied territory shall, unless circumstances do not permit, be carried out in close co-operation with the competent national authorities of the occupied territory" and the Department of Antiquities is the only such "competent national authority". Therefore, the suggested establishment of specific structures and collaboration on the matter with heritage professionals in the occupied areas is not possible since such activity is by definition and law illegal. Instead, we consider the call for abstaining from any illegal excavation activity - that violates cultural rights - a more appropriate measure.

Paragraphs 27-34

25. It is reminded that the Constitution of the Republic of Cyprus was the outcome of delicate political deliberations prior to the independence of Cyprus. Having in mind that we are currently in a negotiation process aiming for a solution to the Cyprus Problem, we consider unwise any reference to, or suggestion for, constitutional amendments, in the report.

Paragraph 37

26. It is more appropriate to make a reference to the specific mandate of the UN Special Rapporteur in the field of cultural rights, rather than introducing elements that are part of the mandate of other UN Special Rapporteurs.

Paragraph 38

27. Since 1974, museums have been looted and so have many private antiquities collections. Archaeologically sensitive areas have remained unprotected and unmonitored. This fact should have been added in the report.

28. Additional Bibliography is suggested for footnote 10:

- Hadjisavvas, S. 2001: "The destruction of the archaeological heritage of Cyprus", in Brodie, N J, Doole, J and Renfrew, C, (eds.), *Trade in illicit antiquities: The destruction of the world's archaeological heritage*, 133-139. Cambridge: McDonald Institute.

- Jansen, M., 2005, *War and Cultural Heritage: Cyprus after the 1974 Turkish Invasion*, Minnesota Mediterranean and Eastern European Monographs XIV, University of Minnesota.
- Pilides D. 2014, "Combating the problem of illicit trafficking of cultural goods" In D. Pilides & A. McCarthy *Protecting the Cultural Heritage of Cyprus: Joining Efforts in Preventing the Illicit Trafficking of Cultural Heritage*, Lefkosia: Department of Antiquities, 31-38.

Paragraph 43

29. Archaeological and folk art museums in the areas not under the effective control of the Government of the Republic of Cyprus have been looted and so have many private collections of antiquities. A number of these antiquities have been traced to Europe's illegal antiquities trade markets and in auctions around the world. This fact should have been added in the report.

Paragraph 45

30. Though the said reference seems to be outside the timeframe of the visit, it should be stressed that unregistered collections have not only been found in the hands of private collectors in Cyprus. Numerous private collections abroad include Cypriot antiquities that have been illegally excavated and exported from Cyprus.

Paragraph 47

31. The systematic changing of names of places, streets and villages in the areas not under the effective control of the Government of the Republic of Cyprus has also seriously impeded the work of cultural heritage professionals.

Paragraph 53

32. Unjustifiable and inacurate references and allegations, such as the reference that "... mosques, minarets...and schools are reportedly now neglected..." or that "... mosques are reportedly used as barns and graveyards turned into grazing land of animals", should have been avoided.

33. In addition, there are many people in the areas under the effective control of the Government of the Republic of Cyprus who care deeply for cultural heritage, while many organizations and institutions contribute in multiple ways for the promotion and maintenance of cultural heritage. This is presented in paragraph 57 but omitted from this paragraph/section.

Paragraph 54

34. Additional bibliographical references documenting the destruction of cultural heritage in the northern part of Cyprus should have been included in the report (e.g. last two references of footnote10 and suggested references included in abovementioned comments).

35. Unfortunately, not only religious sites are in a very bad condition. There are many other cultural heritage sites, archaeological areas and museums that have been destroyed, neglected, left unprotected and looted. This renders an important violation of cultural rights that should have been addressed in the report.

Paragraph 59-61

36. The report refers only to the restoration work undertaken by the Technical Committee on Cultural Heritage, with the support of the European Union and the UNDP

and disregards the work undertaken by the Department of Antiquities, for the restoration of the cultural heritage of the island and in particular in the framework set to contribute towards reconciliation. The Department of Antiquities is responsible for over 1500 listed Ancient Monuments, which span chronologically from the Neolithic period to modern times and are varied in nature. Among these, there are 19 listed Ottoman monuments (mosques and mausoleums) and many more belonging to the Ottoman period that testify to the period's architecture and special characteristics. There is a specific budgetary funding on an annual basis concerning the 19 listed monuments, while in general, conservation work on monuments and sites absorbs the majority of the annual expenditure of the Department of Antiquities. Therefore, the work undertaken by the Department of Antiquities towards this end should have been noted in a more specific way in the report. At the same time, in paragraph 61, undocumented allegations and/or rumors, such as the reference to Greek Cypriot member of the Technical Committee on Cultural Heritage in paragraph 61, should have been avoided.

Paragraph 64

37. There is an attempt to put at the same level the concrete actions of the competent authorities of the Republic (Department of Antiquities) for the protection and/or restoration of cultural heritage, with the verbal "assurances" of the occupation regime that the cultural heritage is respected.

Paragraph 65

38. There is no mention of the fact that Agia Marina Church is situated in the area under Turkish military occupation. This fact should have been clearly mentioned in the report.

Paragraphs 72, 106 (c)

39. With regards to the comments made in paragraph 72 and paragraph 106 (c) concerning the procedures to include the Salt Lakes, including Hala Sultan Tekke, on the UNESCO World Heritage List, it should be noted that consultation with all stakeholders is planned to occur at the appropriate time. Currently the site was nominated for inclusion in the Tentative List. The process of public consultation requires significant time and efforts and it is scheduled to be conducted at a time that makes the most sense. A public consultation is a prerequisite for the Department of Antiquities and will be conducted prior to the preparation of the nomination file for the site. It is also all encouraged by UNESCO, as prescribed in the *Operational Guidelines for the Implementation of the World Heritage Convention*, to prepare nominations with the widest possible participation of stakeholders and this will be duly pursued. Additionally, the future inclusion of the site in the World Heritage List will not affect access to or maintenance of the site, as this has been considered prior to the nomination for the inclusion in the Tentative List.

Paragraph 78

40. It is regrettable that there is no reference to the fact the Department of Antiquities (responsible authority for monuments in Cyprus), as well as the Church of Cyprus, are not to able to manage/administer hundreds of monuments, including churches, that are in the areas under Turkish military occupation since 1974.

Paragraph 79

41. It should be noted that any person wishing to visit/use a mosque, located in the areas under the effective control of the Republic of Cyprus, for religious purposes, can also get practical information about the mosque (i.e. prayer times, opening hours etc) from the local religious representative.

Paragraph 80

42. The Government is not aware of any problems in the communication between the Ministry of Interior (Service for the Management of Turkish Cypriot Properties) and persons interested in obtaining information regarding access to monuments and/or religious sites in the areas under the effective control of the Republic of Cyprus. Thus paragraph 80 is not factual and shouldn't have been included in the report.

Paragraphs 98-99

43. There are inaccurate or totally false data in these paragraphs. The fact is that the new Curriculum of History, applied by the Ministry of Education and Culture of the Republic of Cyprus to all public schools since 2010-2011, aims to provide a coherent and effective body of historical knowledge, relating to the most important periods of the history of Cyprus, the wider European and world history. It aims also at fostering critical thought, analytic learning, and debate. It is based on the contemporary principles and methodology for history teaching, including approaches such as the comparative and multi-perspective approach, as adopted by the Council of Europe.

44. Special emphasis is given to human rights and democratic citizenship education. The new Curriculum aims at cultivating values, shaping attitudes and behaviors that make up the modern democratic citizenship. At the same time, emphasis is placed on aspects that unite the communities of Cyprus, without distortion of historical events or even using these to promote hatred among people. It is the firm policy of the Ministry of Education and Culture to oppose any kind of discrimination related with the other communities living in Cyprus. Educational programs are being developed in public schools on the meaning and importance of cultural heritage, acknowledging, for example, the significance specific historical and religious sites have for particular groups of people.

Paragraph 106 (f)

45. It should be stated that all such allegations, which are in fact in very limited numbers, are being investigated thoroughly by the competent authorities of the Republic of Cyprus. The current language in this paragraph is inappropriate.